

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Plains West Coast Terminals LLC
(PLC-28) for Authorization to Dispose of Certain
Property Located in the City of Huntington
Beach.

Application 15-03-001
(Filed March 2, 2015)

**DECISION DISMISSING APPLICATION
OF PLAINS WEST COAST TERMINALS LLC****Summary**

This decision finds that Commission authorization is not required under Public Utilities Code Section 851 for Plains West Coast Terminals LLC to dispose of and convey an approximately 29-acre parcel located in the City of Huntington Beach, to a yet-to-be-determined third party because the subject property is no longer necessary or useful in the performance of its duties to the public.

This proceeding is closed.

1. Background

On March 2, 2015, Plains West Coast Terminals LLC, (Plains WC Terminals) filed Application (A.) 15-03-001 (Application), for authorization pursuant to Pub. Util. Code § 851 to dispose of and convey property to a

yet-to-be-determined third party.¹ The property in question consists of the following: (i) an approximate twenty-nine (29) acre parcel located northwest of the intersection of Magnolia Street and Banning Avenue in the City of Huntington Beach (Terminal Property) and (ii) three 500,000 barrel carbon steel petroleum storage tanks and associated oil terminal infrastructure (Terminal Facilities) located on the Terminal Property.²

The Terminal Facilities were originally designed for the storage of fuel oil for use by Southern California Edison Company (SCE) at its Huntington Beach

¹ In 2010, Plains WC Terminals filed A.10-10-002, requesting Section 851 authorization to dispose of the utility assets that are the subject of the instant Application. On November 8, 2010, BP West Coast Products, LLC (BP) filed a protest to A.10-10-002. On March 3, 2011, BP filed a motion to withdraw its protest, which was granted on June 2, 2011. On June 13, 2011, the then-presiding Administrative Law Judge (ALJ) directed Plains WC Terminals to file a status report regarding the status of the environmental review being performed by the City. On June 28, 2011, Plains WC Terminals indicated that the City initially granted approval of Plains WC Terminals' Draft Mitigated Negative Declaration (MND). However, various appeals of the approval were filed and as a result there would be a significant delay before this would be resolved. On December 23, 2014, the then-presiding ALJ issued a Ruling directing the parties to file a response setting forth good cause as to why A.10-10-002 should not be dismissed and the proceeding closed. On December 30, 2014, Plains WC Terminals requested that A.10-10-002 be dismissed without prejudice. On January 15, 2015, Decision (D.) 15-01-021 dismissed A.10-10-002 at Plains WC Terminals' request.

² In addition to the three 500,000 barrel tanks described above, the Terminal Facilities include on-site carbon steel piping, concrete containment berms, asphalt road material, a concrete building and foundation, electrical wiring, underground vaults, piping and conduits, and other related oil terminalling storage infrastructure, including 12-, 16-, and 24-inch pipelines connecting the storage tanks to an off-site pipeline system that is used to transfer crude oil to and from customers. The 12- and 16-inch pipelines will be removed to the property line and capped. The 12-inch pipeline, referred to by the applicant as the Pipeline Lateral that runs from the off-site pipeline system and connects to the larger crude oil pipeline system via public and private land rights-of-way will be drained, capped and filled with nitrogen. Although the Pipeline Lateral is no longer used or useful for Plains WC Terminals' current operations, it will be maintained and kept idle as the Pipeline Lateral may in the future be of use for a nearby water desalinization operation or other industrial use.

electric generating station.³ The Terminal Facilities were once part of a larger storage and pipeline transportation system that SCE constructed and operated to provide fuel oil to its various electric generating plants. With the passage of time and new environmental requirements, however, fuel oil is no longer used as a source for electric generation. In 2003, SCE sold its fuel oil storage and transportation facilities to Pacific Terminals LLC.⁴

Plains WC Terminals has been providing third party storage and terminalling services since the close of this acquisition. Plains WC Terminals provides oil storage and distribution services to third-party users pursuant to the terms of a Commission approved tariff, which allows for negotiated contracts between Plains WC Terminals and its customers.⁵

At the time the property was acquired, the predecessor of Plains WC Terminals, Pacific Terminals LLC intended to utilize the Terminal Facilities that are the subject of this Application to store oil for third parties, including refineries. While some of the former SCE storage and pipeline facilities have been put to other valuable uses, others, such as the Terminal Facilities located in Huntington Beach, have been only sporadically and infrequently used over the

³ These electric generating facilities are now owned by AES Corporation.

⁴ The Commission approved the sale of SCE's Fuel Oil Pipeline Facilities to Pacific Terminals in D.03-07-031. Pacific Terminals was owned by Pacific Energy Group LLC ("PEG"). Thereafter, in D.06-09-017, the Commission approved the sale of PEG and the resulting change of control of Pacific Terminals to Plains Marketing, L.P. In D.09-11-011, the Commission approved an internal reorganization whereby the direct ownership of Pacific Terminals was transferred from PEG to Plains Marketing, L.P. and Pacific Terminals' name was changed to Plains West Coast Terminals LLC. The ultimate control of Plains WC Terminals remains with Plains All-American Pipeline, L.P.

⁵ D.03-07-031; Ordering Paragraph 9. Pacific Terminals LLC Advice Letters 1 and 1-A.

past several years.⁶ This in part was caused by the lack of demand for storage and partly because the Terminal Property that is the subject of this proceeding is located at the southern edge of Plains WC Terminals' interconnected storage system, much further from the refineries than other available storage areas.

The Terminal Property is valuable and, rather than continue to remain idle, it can be put to another higher use. Continued use of the Terminal Property by Plains WC Terminals for other company-related purposes is not feasible or practical due to its distant location from refinery facilities, the residential nature of the surrounding area, and the desire of the City to establish a higher and better use of the property.⁷

Plains WC Terminals states that after careful evaluation it has determined that the Terminal Property and Terminal Facilities are not necessary or useful for the provision of third-party oil storage or distribution. Continued fee ownership of the Terminal Property provides no benefits to Plains WC Terminals that cannot be obtained through its other properties. The Application notes that continued ownership of the property has the effect of increasing Plains WC Terminals' property taxes and insurance expenses.

As a result, the subject property is no longer used or useful to Plains WC Terminals. Consequently, Plains WC Terminals, the current owner of the former SCE fuel oil storage and distribution system, seeks approval to dispose of the Terminal Facilities and to sell the Terminal Property to a yet-to-be-determined third party, to be used for other purposes. As discussed above, Plains WC

⁶ Plains WC Terminals Application and Declaration of Counsel dated May 21, 2015.

⁷ In its Southeast Coastal Redevelopment Plan, which affects the Terminal Property, the City expressed its desire for the land to be put a higher and better use.

Terminals proposes to retain the Lateral Pipeline and the related right-of-way for possible future use, lease or conveyance to another user.

The Terminal Property is currently zoned for public/semi-public use. It is located near wetlands and the beach in a predominantly residential area. Prior to submitting its Application to the Commission, Plains WC Terminals requested a demolition permit from the City, which was subsequently approved by the City. Prior to issuing the demolition permit, the City conducted an environmental review under the California Environmental Quality Act (CEQA).⁸ With its Application Plains WC Terminals included the following environmental documents for the demolition of the Terminal Facilities:

- The Notice of Final Action (Revised), Magnolia Oil Storage Tanks Demolition and Transfer Piping Removal, dated November 15, 2012.⁹
- Coastal Commission Notice of Appeal Period, dated April 2, 2013 and Notice of Final Permit, dated April 19, 2013.

2. Discussion

In its Application, Plains WC Terminals notes that the subject property is no longer necessary or useful in the performance of its duties to the public and that § 851 of the Pub. Util. Code should not apply. However, Plains WC Terminals indicated that, out of an abundance of caution, it was seeking the approval of the Commission prior to consummating any sale of the subject

⁸ Public Resources Code Section 21000, *et seq.*

⁹ The Notice of Final Action contained Mitigated Negative Declaration No. 10-07 and Coastal Development Permit No. 10-11, which included the Findings and Mitigation Measures that are required for any proposed demolition of the Terminal Facilities which are located on the Terminal Property.

property. The Commission appreciates the caution that Plains WC Terminals has shown in seeking our approval prior to disposing of the subject property.

According to § 851 “[a] public utility ... shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of ... property necessary or useful in the performance of its duties to the public ... without first having either secured an order from the commission authorizing it to do so ...” However, § 851 also provides that “[t]his section does not prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public ...”

In reviewing a § 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”¹⁰ The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.¹¹

We must now evaluate whether § 851 applies to the proposed sale of the subject property. If it does not apply, then it is appropriate to dismiss the Application. If it does apply, we must decide whether to approve the request. We must also decide whether there are any safety concerns or issues presented by the Application pursuant to Pub. Util. Code § 451; and whether there are any ratemaking, accounting or environmental consequences presented by the Application.

The primary question for the Commission in this § 851 proceeding is whether the Terminal Property is no longer necessary or useful to Plains WC

¹⁰ *San Jose Water Company*, 10 CRC 59 (1916) at 62-63.

¹¹ D.00-07-010 at 6.

Terminals in the performance of its duties to the public. If it is not, § 851 does not apply.

We note that Plains WC Terminals has only used the subject property sporadically and infrequently over the last several years. Although Plains WC Terminals purchased the property as part of a larger purchase of oil transportation and storage facilities, the subject property is much further from the refineries than other available storage facilities and environmental concerns prevent the use of fuel oil as a source electric generation. As such, the subject property has sat idle.

Also, the residential neighborhood in close proximity to the facility and the desire of the City to establish a better and higher use of the property renders the property facilities unusable for their intended purpose. Thus, the facilities have no current use as public utility property. These same restrictions would also prevent the use of the facilities for other public utility purposes. Additionally, if the Terminal Facility is dismantled and removed this will render the property useless for public utility purposes.

After review of these pertinent facts, it is clear that the Terminal Property and Terminal Facilities are not necessary or useful to the performance of Plains WC Terminals duties to the public, currently or in the future. As such, the sale would not impact Plains WC Terminals ability to provide utility services to its customers. We find that the Terminal Property is no longer useful or necessary to Plains WC Terminals to carry out its operations and to serve its customers and the public.

The Terminal Facilities have seen only very occasional use over the last several years. Allowing Plains WC Terminals to sell the Terminal Property will allow the property to be put to a higher and better use. Since the subject

property is no longer necessary or useful to Plains WC Terminals to carry out its operations and to serve its customers and the public, § 851 of the Pub. Util. Code does not apply to the proposed sale. Therefore, it is appropriate to dismiss the Application.

Although we are dismissing the Application, we have considered whether the Application presents any safety concerns pursuant to Pub. Util. Code § 451. We find that the sale of the property, in and of itself, will not have an adverse impact on Plains WC Terminals' ability to furnish and maintain adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities that are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.¹²

Although the Terminal Property and Terminal Facilities are not useful for current or future utility purposes, we consider whether there is need to address any ratemaking consequences presented by the Application. According to the Application, the Terminal Property was originally acquired as part of a multi-property transaction.¹³ We note that D.03-07-031, in approving the sale of these facilities to Plains WC Terminals' predecessor, did not establish any rate base upon which to determine gains or losses on the sale of the facilities. Furthermore, Plains WC Terminals establishes its charges according to market-based pricing according to negotiated contracts, and there are no reportable earnings upon which to determine losses or gains. Therefore, we conclude that there are no ratemaking or gain on sale considerations applicable in this instance.

¹² See, Pub. Util. Code § 451.

¹³ See, D.03-07-031.

We also consider whether there are any environmental considerations associated with the Application. As we are dismissing the Application, environmental reviews under CEQA are not required. However, we note that, in its Application, Plains WC Terminals provided ample information that the City has conducted appropriate environmental review and will provide responsible environmental oversight concerning the demolition of the subject property.¹⁴

For all of the foregoing reasons, we determine that the sale of the subject property does not require Commission approval under § 851, and we therefore dismiss the Application.

3. Categorization and Need for Hearing

This proceeding was preliminarily categorized as “Ratesetting” and it was preliminarily determined that hearings were needed. (Resolution ALJ 176-3353.) We confirm the Commission’s preliminary determination as to category. Because no protests or responses were filed and no appearances were made at the prehearing conference, other than the applicant, we conclude that hearings are not needed.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and

¹⁴ It is noted that the environmental review that was conducted by the City was for the demolition of the Terminal Facilities only. Any subsequent purchaser of the property would be responsible for obtaining any and all necessary permits and environmental reviews prior to any proposed development of the Terminal Property. Additionally, any subsequent purchaser of the Terminal Property would be responsible for ensuring that the demolition permit issued by the City remains valid prior to engaging in any demolition activities of the Terminal Facilities. Any subsequent purchaser of the Terminal Property would also be responsible for complying with all findings and mitigation measures identified in the City’s Mitigated Negative Declaration No. 10-07, during the course of any demolition activities.

Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

5. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. The Terminal Property was originally acquired in 2003 as part of a multi-property transaction.
2. Over the last several years the Terminal Property and Terminal Facilities have only been sporadically used.
3. The Terminal Property and Terminal Facilities are not necessary or useful to the performance of Plains WC Terminals' duties to the public, currently or in the future.
4. As Plains WC Terminals establishes its charges for the Terminal Facilities through negotiated market-based contracts, there are no reportable earnings upon which to determine gains or losses.
5. There are no cost-of-service ratemaking issues or considerations relating to the utility assets that are the subject of this proceeding.
6. As a result of there being no cost-of-service ratemaking issues or considerations associated with the subject assets, there are no gain on sale considerations.
7. Since the Application is being dismissed, an environmental review under CEQA is not required.
8. The proposed sale of the Terminal Property and Terminal Facilities is exempt from § 851.

9. Since § 851 does not apply, it is appropriate to dismiss the WC Plains Terminals' Application.

Conclusions of Law

1. The purpose of § 851 and related sections is to enable the Commission to review the transfer of public property before the transfer is consummated, and take such action as condition of the transfer, as the public interest may require.

2. Nothing in § 851 prevents the sale, lease, encumbrance or other disposition of any property which is not necessary or useful in the performance of its duties to the public.

3. The subject property is no longer useful or necessary to Plains WC Terminals in the performance of its duties to the public.

4. Commission review of the proposed transaction under § 851 does not apply in this case and therefore it is appropriate to dismiss the Application.

5. The preliminary determination in Resolution ALJ 176-3353 that hearings are necessary should be changed to "No hearings are necessary."

6. This decision dismissing the Application should be effective today.

O R D E R

IT IS ORDERED that:

1. Plains West Coast Terminals' Application to sell its Terminal Property, consisting of an approximately 29-acre parcel located in the City of Huntington Beach, is dismissed.

2. The preliminary determination in Resolution ALJ 176-3353 that hearings are necessary is changed to "No hearings are necessary."

3. Application 15-03-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.